

PROPOSED ROLES OF STATE AND FEDERAL FISH AND WILDLIFE AGENCIES IN KEY PLAN IMPLEMENTATION DECISIONS

The following excerpts from the November 18, 2010 draft of the BDCP describe the proposed roles of the State and federal fish agencies in decision-making processes associated with various implementation actions. The language specifically describing the fish and wildlife agency role has been highlighted.

MONITORING

The Implementation Office (IO) Science Manager, under the direction of the BDCP Program Manager, will be responsible for the overall management and oversight of the BDCP monitoring and research programs, including the implementation of monitoring-related activities (see Section 7.3.4, *Management of Biological Monitoring, Scientific Research, and Reporting Programs*). The Science Manager, with the support of the Interagency Ecological Program (IEP), will be responsible for developing and overseeing the implementation of the monitoring and research program activities. The Science Manager may further utilize the Delta Science Program and Independent Science Board to review and provide input on aspects of the monitoring and research program. The IO may look to the Authorized Entities and Supporting Entities (see Chapter 7, *Implementation Structure*) to conduct monitoring activities on specific conservation actions, as appropriate. (3-470)

The BDCP Science Manager will be responsible for ensuring that the BDCP science activities, reporting, and reviews are coordinated with other science activities being conducted in the Delta. **The Science Manager will seek the assistance of the Lead Scientist of the IEP and the Chief Scientist for the Delta Science Program to ensure that BDCP science activities, reporting, and reviews are coordinated with other science activities being conducted in the Delta.** (3-471)

RESEARCH

The BDCP Science Manager will identify research priorities to address specific uncertainties and provide funding for research to support more effective implementation of the Conservation Strategy. **The Science Manager will coordinate with other entities, including IEP and the Delta Science Program to identify research needs and priorities.** (3-480)

DATABASE DEVELOPMENT

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The BDCP Implementation Office will develop and maintain a comprehensive spatially-linked database to track implementation of all aspects of the BDCP. The database would be structured to be “user friendly” and to allow for future expansion and integration with external databases (e.g., linkage to databases of the Delta Science Program, and California Water Quality Monitoring Council). (3-481)

ADAPTIVE MANAGEMENT

The BDCP Science Manager may create an “Adaptive Management Team” and will serve as the chair of and recommend membership for the BDCP Adaptive Management Team to the Program Manager. Membership of the Adaptive Management Team will be reviewed and approved by the BDCP Program Manager and the BDCP Implementation Board. The Adaptive Management Team may include:

- BDCP Science Manager (chair);
- **IEP Lead Scientist;**
- **Senior scientists from IEP member agencies¹;**
- SFWCA scientists;
- Other scientists; and
- Scientists from the Stakeholder Committee, as appropriate.

The Science Manager will utilize the Adaptive Management Team to support the conduct of annual and multi-year reviews, in coordination with the Delta Science Program, including efforts to identify issues that may benefit from independent science advice; consider potential adaptive management actions that may be indicated by the results of monitoring and research efforts; and identify research that may be useful to effectively address uncertainties. The Adaptive Management Team will make recommendations to the Program Manager for adaptive management changes to the BDCP Conservation Strategy. (3-605)

Adaptive Management Decisions and Responses (Not Related to Water Operations)

The Program Manager will manage the BDCP adaptive management program through the Science Manager. **The Program Manager will facilitate and coordinate discussion**

¹ IEP has ten member agencies: three State (DWR, DFG, and State Water Resources Control Board); six Federal (USFWS, Reclamation, U.S. Geological Survey, USACE, NMFS, and U.S. Environmental Protection Agency), and one non-government organization (The San Francisco Estuarine Institute).

and consideration of adaptive management issues among the various participating entities, including the authorized entities, fish and wildlife agencies, and the Implementation Board to facilitate decision-making regarding changes in the implementation of the Plan.

Process:

1. Monitoring and targeted research (Figure 3-64, box 1) will be conducted under the direction of the Science Manager, with support provided by the IEP.
2. The BDCP Science Manager, in coordination with the IEP, Adaptive Management Team, and the Delta Science Program, will assemble, synthesize, and analyze the results of BDCP monitoring and targeted research (Figure 3-64, box 2) efforts and integrate the results of new and relevant scientific research and studies conducted by other parties (Figure 3-64, box 3).
3. Based on this information and the advice of independent scientists, as appropriate (Figure 3-64, boxes 5 and 6), the Adaptive Management Team, through the Science Manager, will provide recommended program changes to the Program Manager (Figure 3-64, Box 4), either as part of the annual and five year workplan development process or on an *ad hoc* basis, where an adaptive change should occur on a shorter than annual timeframe.
4. **The Program Manager will recommend adaptive management changes to the Implementation Board [AND FISH AND WILDLIFE AGENCIES] (Figure 3-64, Box 4). The Implementation Board [AND FISH AND WILDLIFE AGENCIES] will provide an opportunity for stakeholder input (Figure 3-64, box 7). The Implementation Board [AND FISH AND WILDLIFE AGENCIES] will review the Program Manager's recommendation and make final acceptance of the proposed adaptive management changes (Figure 3-64, Box 8).**

Decision Process for Adjusting Water Operations within the Adaptive Range

SWP and CVP water operations are under the authority and are the responsibility of DWR and Reclamation, not the Implementation Office. Accordingly, DWR and Reclamation will implement the BDCP water operations conservation measures, under CM1 *Water Facilities and Operations*. Adjustments of the water operations criteria within the adaptive range for water operations, established at the time of BDCP authorization and described in CM1 *Water Facilities and Operations*, may only be conducted through the following process.

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1. **Proposal to change operating criteria within the adaptive range provided to Program Manager** - Proposals to change the criteria for water operations are likely to come primarily from the IO staff, but may come from an outside body. However, proposed changes may also be requested by member of the Stakeholder Committee. All proposals related to changes in the water operations criteria will be submitted to the Program Manager.
2. **Review of proposed change** - The Program Manager, through the Science Manager, will solicit independent science input on the proposed change from the Delta Science Program, Independent Science Board, and other appropriate independent scientists with expertise in the resources and operational change proposed.
3. **Submittal of proposal for change by Program Manager to the “Decision Body”** – The Program Manager will submit the proposed change to the “Decision Body” for review as part of the draft Annual Workplan and Budget. Out-of-cycle proposals for changes may be submitted, if necessary to address biological objectives in situations that are time sensitive. *[Note to Reviewers: The placeholder “Decision Body” is used here until the appropriate entity(ies) is/are identified to serve in the role.]*
4. **Review of proposal for change by “Decision Body”** - The program manager will facilitate a review by the “Decision Body.” The “Decision Body” will review the proposed operational change and determine if it is acceptable.
5. **Resolutions of disputes among directors** – If the “Decision Body” cannot reach consensus, then the decision on the proposed change will be elevated to the “Higher Level Decision Body” for joint resolution.
6. **Establish the changed criteria** - Once changes are agreed to by the “Decision Body” or through the dispute resolution process, they will be incorporated into the Annual Water Operations Strategy by DWR and Reclamation and implemented under the accepted timetable. These changed criteria will become the new operational criteria for the conservation measure within which the Real Time Operations Response Team may make real time operational decisions.

The process described above applies only to changes in operational criteria that are within the bounds of the operational adaptive range established at the time of BDCP authorization and described in CM1 *Water Facilities and Operations*. (3-608/609)

PLANS AND REPORTS

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Throughout the course of BDCP implementation, the Implementation Office will prepare and submit to the fish and wildlife agencies the following documents, as described in this chapter:

- Annual Workplan and Budget;
- Annual Water Operations Strategy;
- Annual Progress Report;
- Annual Water Operations Report;
- Five-Year Comprehensive Review; and
- Five-Year Implementation Plan.

The Implementation Office will work in partnership with DWR, Reclamation, USFWS, NMFS, DFG, the BDCP Stakeholder Committee, the Delta Stewardship Council, and the Delta Science Program in the development of these planning and reporting documents. (6-23)

Annual Water Operations Strategy

The Implementation Office will work closely with CVP and SWP operation managers to ensure the proper implementation of operations conservation measures. DWR and Reclamation will retain their authority and obligation to determine overall water project operations consistent with their various permit terms and conditions and other applicable requirements. **DWR and Reclamation will conduct Delta operations in close coordination with DFG, USFWS, and NMFS and in accordance with permitted operating criteria ... (6-24)**

No later than December 15 each year, DWR, Reclamation, DFG, FWS, and NMFS will develop a Water Operations Strategy, including provisions for seasonal variations, that identifies:

- Operations priorities for both fishery and water supply for the coming year;
- Expected operations or “most likely” criteria that will guide operations within the real-time operations ranges established in the water operations conservation measures; and
- Monitoring, data collection, research, and adaptive management experiments associated with that water year’s water operations.

The Annual Water Operations Strategy will include the first of three Seasonal Operations Strategies. **No later than December 31, March 31, and July 31 of each year, DFG, USFWS, and NMFS will seasonally evaluate then current hydrologic and fishery**

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information and will update the expected operating criteria within the real-time operations range, as necessary. Based on this information, DWR and Reclamation will prepare Seasonal Operations Strategies that update their operating forecasts and expected water supply projections.

Annual Water Operations Report

No later than November 15 of each year, DWR and Reclamation, with participation from DFG, USFWS and NMFS, will prepare a Water Operations Report on the prior water year's (October 1 to September 30) operational effects on covered species. (6-28)

CHANGED CIRCUMSTANCES

Process to Identify Changed Circumstances

The occurrence of a changed circumstance will generally become apparent to the Implementation Office through information gained from system-wide or effectiveness monitoring, scientific study, or by notification received from another party (e.g., contamination of a terrestrial area reported by a county health agency). Upon an indication that a changed circumstance has occurred, or is likely to occur, the Implementation Office will take immediate steps to investigate and confirm the occurrence of such an event. **If a changed circumstance appears to have occurred, the Implementation Office will contact the appropriate fish and wildlife agencies to confirm the changed circumstance.** The Implementation Office will notify the BDCP Authorized Entities, relevant Supporting Entities, and the Implementation Committee of the changed circumstance. (6-34)

PLAN MODIFICATIONS AND AMENDMENTS

Procedures for Minor Modifications or Revisions

The Implementation Office, the Authorized Entities, or the fish and wildlife agencies may propose Minor Modifications or Revisions by providing written notice to the Implementation Office, Authorized Entities, and fish and wildlife agencies. Such notice will include a description of the proposed Minor Modifications or Revisions, an explanation of the reason for the proposed Minor Modifications or Revisions, an analysis of its environmental effects including any impacts to Covered Species, ...

The fish and wildlife agencies and/or the Authorized Entities may submit comments on the proposed Minor Modification or Revision in writing within sixty (60) days of receipt of notice. If any Authorized Entity disagrees with the proposed Minor Modification or Revision for any reason, the Minor Modification or Revision will

not be incorporated in the BDCP. If the fish and wildlife agencies do not concur that the proposed Minor Modification or Revision meets the requirements for a Minor Modification or Revision, the proposal must be approved according to the Amendment process. Any Authorized Entity or fish and wildlife agency may institute the informal meet and confer process set forth in the BDCP Implementing Agreement to resolve disagreements concerning a proposed Minor Modifications or Revisions.

If the Authorized Entities are in agreement regarding the proposed Minor Modification or Revision, and the fish and wildlife agencies concur that the requirements for a Minor Modification or Revision have been met and the modification or revision should be incorporated in the Plan, the BDCP will be modified accordingly. If any fish and wildlife agency fails to respond within the 60-day period to the written notice, the agency will be deemed to have approved the proposed Minor Modification or Revision.

(6-48)

Process for Formal Amendment

Formal Amendments will involve the same process that was required for the original approval of the BDCP. In most cases, an Amendment will require public review and comment, CEQA/NEPA compliance, and intra-Service Section 7 consultation. Amendments will be subject to review and approval by the Implementation Office and the Permittees. **The Fish and Wildlife Agencies will use reasonable efforts to process proposed Amendments within one hundred eighty (180) days.**

(6-49)

PERMIT SUSPENSION AND REVOCATION

Suspension of the Federal Permits

Under certain circumstances defined by federal regulation, USFWS or NMFS may suspend, in whole or in part, the regulatory authorizations they issue under the BDCP. However, except where USFWS or NMFS determines that emergency action is necessary to avoid irreparable harm to a Covered Species, it will not suspend an authorization without first (1) attempting to resolve the issue through the informal dispute resolution process set forth in the BDCP Implementing Agreement, and (2) identifying the facts or action/inaction which may warrant the suspension and providing the Implementation Office a reasonable opportunity to implement appropriate responsive actions. Any decision to suspend one or both federal permits must be in writing and must

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be signed by the Secretary of the Interior and/or the Secretary of Commerce, as the case may be.

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Revocation of the Federal Permits

Unless immediate revocation is necessary to avoid the likelihood of jeopardy to a listed species, USFWS and NMFS will not revoke the Federal Permits unless the Authorized Entities fail to fulfill their obligations under the BDCP, and only after (1) completing the informal dispute resolution process described in the BDCP Implementing Agreement, and (2) identifying the actions/inactions that may warrant the revocation and giving the Implementation Office a reasonable opportunity to implement appropriate responsive actions. USFWS and NMFS will revoke or terminate a Federal Permit to avoid the likelihood of jeopardy to a listed species only in accordance with the Federal Permit Revocation Rule as described below. Any decision to revoke one or both Federal Permits must be in writing and must be signed by the Secretary of the Interior and/or the Secretary of Commerce, as the case may be.

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Suspension or Revocation of the State Permit

If the Authorized Entities violate the terms and conditions of the state permits, or if necessary to avoid jeopardizing the continued existence of a listed species, DFG may suspend or revoke the permits in whole or in part. However, unless immediate revocation is necessary to avoid the likelihood of jeopardy to a listed species or to address rough proportionality (see below), DFG will not suspend or revoke the state permits without first (1) attempting to resolve any disagreements regarding the implementation or interpretation of the BDCP or this Agreement in accordance with the informal dispute resolution process provided in the BDCP Implementing Agreement, and (2) notifying the Implementation Office and permittees of the action/inaction that may warrant the suspension or revocation and providing the Implementation Office and permittees with a reasonable opportunity to take appropriate responsive action. Any decision to suspend or revoke one or both state permits must be in writing and must be signed by the Director of DFG.

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